

The current CRADA Manual should be modified as follows:

1) On page 67 of the Manual [Appendix B, Article XXII “U.S. Competitiveness”], the language that discusses interaction with the Office of the U.S. Trade Representative should be revised to read as follows:

When CRADAs involve foreign entities, additional factors must be addressed. Under Executive Order 12591, when considering whether to enter into a CRADA with a foreign entity, and after consultation with the United States Trade Representative (USTR), (either by accessing its published materials, such as its Watch List and its Priority Watch List, or by the submission of a request for a formal written USTR opinion), appropriate consideration must be given to (1) whether the foreign entity and/or its government permit and encourage U.S. entities to enter into similar agreements on a comparable basis; (2) whether the foreign government has policies to protect intellectual property rights; and (3) when the research will involve or produce technologies subject to U.S. national security export controls, whether the foreign government has adequate measures to protect the transfer of the technology to prohibited locations. Consideration of the first factor is also required under 15 U.S.C. 3710a(c)(4)(B).

The USTR consultation is required. To satisfy this requirement, the Laboratory may rely on the following information: (1) U.S. Trade Representative Inventory of Foreign Trade Barriers, (2) U.S. Trade Representative Special 301 Report, and, (3) such other relevant information available to the Contracting Officer. The Contractor should review the U.S. Trade representative web site at: <http://www.ustr.gov> for the most current versions of these reports and other relevant information. The contractor is also encouraged to utilize other available resources, as necessary, to allow for a complete and informed decision. If the Laboratory decides to secure a formal written opinion from the USTR, the request is to be submitted to the USTR via the Office of the Assistant General Counsel for Technology Transfer and Intellectual Property (GC-62) at DOE headquarters. The USTR does not address export control issues. The USTR opinion, either in the form of published materials on its website or in the form of a formal written opinion, is not controlling. It is only required that their opinion be considered by the person designated by the Laboratory Director who decides whether to enter into the CRADA or not.

2) On page 21 of the Manual [Appendix B, Article VI “Product Liability”], the language should be revised to read as follows:

Except for any liability resulting from any negligent acts or omissions of the Government or the Contractor, the Participant indemnifies, etc.

3) On page 21 of the Manual [Appendix B, Article VI “Product Liability”], the language in Option 1 should be revised to read as follows:

Except for any liability resulting from and negligent acts or omissions of the Government or the Contractor, the Participant agrees to hold harmless, etc.